

## Servitudes and types of property (real) servitudes by legislation in Kosovo

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### Abstract

This paper will address the topic of servitudes with special emphasis on property servitudes, always based on the provisions of positive law in the Republic of Kosovo.

Since Roman law, the right of ownership over foreign property was unclear especially when it came to servitudes. In Roman law there was not a general category regulated by general norms, but a set of typical figures of servitudes with common characteristics. Despite what was discussed in Roman law we can say that in all legal systems, there is necessarily a need for the existence of subjective real rights over one's own thing and over a foreign thing. In general, in addition to the property right, there is the fact that there are other legal property rights, and after the property right, the right of servitude, otherwise called as a property right over the foreign thing, is considered the most dominant. This right of the subject over the foreign thing exists when the holder uses the foreign thing for his own needs or his own thing, in fact the thing which is owned by another subject. The purpose of this paper is to clarify how the right of servitude is legally defined by concretizing it in property servitudes. The paper's content is related to the right of property servitudes, which speaks extensively about how the right created by legal work, court decision or even by law, is created, acquired, protected and extinguished!

**Keywords:** The right of servitude, property servitudes, creation-acquisition of servitude, protection of servitude, termination of servitude.

### Introduction

In real law, servitudes have an important place and in most cases in the legal literature they are ranked immediately after the legal institute of ownership and always before other property rights over foreign objects. The right of servitude is a subjective right of absolute character which makes it possible for its holder to use the foreign thing for the needs of his own thing or to ask the holder of the service property not to use his own thing due to that there is a right of servitude in favor of the dominant property. In principle, the holder of the right of servitude has authorizations to use the foreign thing in a certain volume. Regarding the presentation of the right of servitude in theory there are opinions that the right of servitude is an original right, which is as a result of the existence of the level of economic and cultural relations of a certain environment and that it has developed independently from the right of ownership. The literature states that, "the right of servitude is a real right over a foreign thing, based on which, the authorized person is allowed a certain use of a foreign thing". The definition of the right of servitude, as an institute of real law, is made by the law itself. In Kosovo, the right of servitudes, property servitudes, is regulated by the Law on Basic-Legal-Property Relations, of 1980, with articles 49-60. This law regulates only property servitudes, because it is foreseen that property servitudes are more

widely regulated by republican, respectively provincial laws. Even today Kosovo has unresolved the issue of the right to personal servitudes. The Law gives only the definition regarding the real servitude and it states that: real servitude is the right of the owner of an immovable property (ruling property) to perform certain actions on the immovable property of the other owner for the needs of this immovable property (service property) or to ask the owner of the service property to refrain from performing certain actions that he would otherwise have the right to perform on his immovable property.

### 1 - The notion of Servitudes

Property right over the ownership of a foreign thing is a *servitude*, which has an important place in property law and in most cases in the legal literature is listed immediately after the legal institute of ownership and always before other property rights over the foreign property. The right of servitude is a real right over the foreign thing which enables its holder to use the thing of another or to request that the owner of the thing be limited to the use of his right, in the interest of the holder of the right of servitude. In principle, the holder of the servitude right has authorizations to use the foreign thing in a certain volume.<sup>1</sup>

There are three basic characteristics of the right of servitude. *First*, this right exists over the foreign thing. *The second* is that, from it derives the authorization for its bearer to require from the owner of the service good to be patient (e.g. to pass through his property). *The third characteristic* is that by exercising this right, the service good should be charged as little as possible. The literature states that “*the right of servitude is a real right over a foreign thing, based on which, the authorized person is allowed a certain use of a foreign thing.*”<sup>2</sup> Traditionally, servitudes are defined as a “*burden placed on one property for the use and usefulness of another owner’s property*”. The burden in which the servitude consists is a restriction of the right to enjoy an immovable property defined as *service property*, which corresponds to the right of the owner of another immovable property defined as *dominant property*. One of the most common cases in servitude is pass servitude.<sup>3</sup> From all the general meanings on the right of servitude it can be said that: *A servitude is a real right over a foreign thing, which makes it possible for its holder to use the foreign thing in a certain way.*

So generally, legally the right of real servitude is the right of the respective owner of an immovable property (dominant immovable property) to use in a certain way another immovable property (service immovable property), or prohibit the performance of a certain action or to exclude the exercise of a certain right, which derive from the right of ownership in the service real estate.<sup>4</sup>

#### 1.1 Lawyers' opinion on servitudes

The lawyers defined as servitudes the permanent services that were created between two neighboring properties with the will of their owners. Rather, to point out these services between the two estates, lawyers called the civil estate rights *iura*

<sup>1</sup> Aliu. Abdulla. *E Drejta Sendore* (pronësia), Prishtina, 2009. p. 143.

<sup>2</sup> Gams. Adria. *E drejta Private*. Tirana, p. 143.

<sup>3</sup> Galgano. Francesco, *Private Right*. Italy, 1992. p.206.

<sup>4</sup> See Law no. Nr. 03 / L-154. On Property and Other Real Rights: Prishtina, 2012. Article 252, par.1.

*praediorum*.<sup>5</sup> *Servitu or servire*, as a term used to denote slavery or dependence. The property aggravated by the servitude is *fundusi qui servi*, while the aggravated one is considered free. So servitudes are independent, permanent, unconditional liabilities of the owner of the servitude object, who either did not have the authorization to prevent the holder of the servitude right in a certain use of his thing, or was obliged to not to use his property in a certain form even though he would be entitled to do so if servitude relationships had not been established..<sup>6</sup> And today in the period of modern times, the right of servitude is legally recognized and it is much more extended than in the past, thus increasing the tax count of real servitudes and dividing it into land servitudes<sup>7</sup> (road servitude, necessary crossing, water servitude, natural water flow, pasture servitude, hunting servitude) and domestic servitude (positive, negative, continuous and non-continuous domestic servitude, visible and invisible)<sup>8</sup>, in addition, according to the lawyers, it is claimed that there will be other real servitudes which will be provided in the Law on Property and other real rights, specifically in the Civil Code of Kosovo. Among other things, generally based on the positive law in force in Albanian-speaking lands, I consider that the term servitude should be replaced with the term co-use.

### 1.2 Ways of creating servitudes

In ancient Roman law servitudes were created with *mancipio*<sup>9</sup> and *in iure cession*. Rural servitudes were created with *mancipio*, while with *in iure cession* both rural and other types were created. There was also the indirect establishment of the right of servitude through the so-called self-preservation. Informal and formal contracts as well as long statute of limitations as a way of establishing servitudes appeared in the classical period for Roman citizens. While Justinian tried to make a new system of the institute, classifying the servitudes into real servitudes *praediorum* and personal *personarum*.<sup>10</sup> Under current law, the right of real servitudes is created on the basis of a legal work, a decision of a state body or a law<sup>11,12</sup> Real Servitude based on legal work<sup>13</sup> can be created by forming a contract or a conditional will to prove the validity

<sup>5</sup> Selmani. Bashkim. *E Drejta Romake*, Tetova 2013, p. 442.

<sup>6</sup> Ibid. p. 442-443.

<sup>7</sup> Statovci. Ejup. *E Drejta e Servituteve*. Prishtina, 1985. p. 100.

<sup>8</sup> Statovci. Ejup. *E Drejta e Servituteve*. Prishtina, 1985. p. 125.

<sup>9</sup> According to Roman law, the right of property servitudes was created with the creation of property (*mancipio*), ie the right of property servitude was created with the creation of the right of ownership over a land, unlike today, it can not be created if is not registered in the public books of the cadastral status as well as with the death (*in iure cession*) of the owner of the dominant land which happens even today that the right of real servitude can pass by inheritance, ie after the death of the owner of the dominant land!

<sup>10</sup> In the category of personal servitude Justinian set the usufruct, use (*usus*) and the right of residence (*habitation*); this classification of him was wrong and unnecessary, and for this the glossators created the category of real rights over foreign objects where the servitude and the usufruct are independent institutes.

<sup>11</sup> See: Skrame. Olti. *Komentari i Kodit Civil i Republikës së Shqipërisë*. The first volume. Tirana, 2011. Pg. 357.

<sup>12</sup> See: Law no. 03 / L-154 On Property and Other Real Rights. Prishtina, 2009. Article 253, par.1.

<sup>13</sup> Legal work is [Pravni posao; Legal transaction; Rechtsgeschäft] - Legal work is a factual circumstance with one or more declarations of will, through which declarations a legal consequence is caused. So, legal work is a contract, but even when only one will is declared, e.g. denunciation,

of the legal work, be it a contract or the will.<sup>14</sup> The real servitude can be created with a court decision, taken either in contentious procedure if the parties have had a dispute (misunderstanding) as well as in non-contentious procedure in case the party submits a proposal for recognition of the right to real servitude. Also, the right of real servitude can be acquired by law, which the law itself determines that a right of real servitude can be acquired even if there is no court decision or any legal work. Cases in which the right of real servitude is acquired according to the law are, for example: branches, water lines with main roads along rivers and navigable canals or capable of carrying, construction or repair of roads and other public works.<sup>15</sup> Servitudes created based on the law are those that are imposed by the law itself, ie they are created only on the basis of a legal provision and in the absence of the will of the owners (consent is not required), even against the will of the owner of the service item.<sup>16</sup> The created real servitude must be obtained by registering in the Register of Immovable Property Rights.<sup>17</sup> So the servitude created by legal work, by court decision and by law is only *iustus titulus*, and to gain the servitude created on the basis of the title (legal title) is necessary *modus acquirendi* (registration in public books). According to the above, a right of real servitude is not acquired by taking a decision by the court or by creating a legal work, whether a will or a contract, but is gained by registration in public books.

## 2 – Principles of Servitudes

The right of servitudes, as well as the right of ownership is a unique legal institute in real law and as such is regulated based on several principles. These principles should be common to all types of servitudes, both real estate and personal servitudes. Some authors present the principles in a broad sense, including the common principles for all property rights.<sup>18</sup> Thus in Roman law Roman jurists in their decisions applied general principles related to land servitudes and the interpreters built with them a series of important rules where some of these rules were:

- It is not exactly a servitude if someone does something, but for someone to tolerate or not do something`, so the owner of the service property must allow or not hinder. Then as another principle was: the servitude can not be exercised separately from the property and a right of use, usufruct can not be created on it, and it can not even be leased.
- A servitude cannot be exercised separately from the property and no right of use, usurpation or lease can be created on it.
- No one can build a servitude on an item of his own, because no one can be called to place a servitude on himself.
- Servitude is inseparable even if the main assets are divided.
- Servitudes are not created or extinguished partially.<sup>19</sup>
- While the division of principles has now been changed and supplemented in some

public promise, etc. There are different legal tasks, depending on the number of declarations of will. One-sided legal work is when only one will of a person is declared, e.g. public promise, will, etc.

<sup>14</sup> Aliu. Abdulla. *E Drejta Civile* (Pjesa e përgjithëshme). Prishtina, 2013. p. 355.

<sup>15</sup> Statovci. *Ejup. E Drejta e Servituteve*. Prishtina, 1985. p. 161.

<sup>16</sup> Ibid. p.168.

<sup>17</sup> See: Law no. 03 / L-154 On Property and Other Real Rights. Prishtina, 2009. Article 253, par.2.

<sup>18</sup> Aliu. Abdulla. *E Drejta Sendore (Pronësia)*, Prishtina 2009, p. 147.

<sup>19</sup> Selmani. Bashkim. *E Drejta Romake*, Tetova 2013, p. 446.

cases, the main principles of the right of servitudes are:

1. Servitude is property right;
2. Servitude is a property right on a foreign thing;
3. Servitude can not be in making (exist in acting);
4. Servitude should be useful;
5. The principle of servitude restriction (Exercise of servitude must be done carefully);
6. Independent inalienability of servitudes (servitudes are inalienable in themselves);
7. There can be no servitude in the servitude itself;
8. Real servitudes are indivisible ;<sup>20</sup>

### **2.1. Servitude is property right**

By the principle that servitude is a property right we mean the fact that the right of servitude is an absolute subjective right with all the characteristics of other property rights, as absolute rights. The right of servitude operates *erga omnes* (to all) where its holder acts on the basis of the authorizations given by the right of servitude. It should be emphasized that the servitude as a real right enjoys all the principles of the real right<sup>21</sup> as property rights and other rights such as: pledge, encumbrance and the right to build.

### **2.2. Servitude is a property right in a foreign thing**

From Roman law it is simply stated that the subject can not have a servitude over his own thing, but the servitude can be right over the foreign thing. Both in Roman law and in the law of modern times they stood on the concept that the servitude can be created only on the foreign thing, and in no way can the subject of the law (natural or legal person) create the servitude on his own thing. So the owner of the thing can not create a servitude on his thing, since he is the owner and has much more rights than an entity that has the right of servitude. <sup>22</sup>

### **2.3. Servitude can not be in making (exist in acting);**

By this principle, we mean the fact that the owner of the service property (the owner who is in charge of the servitude), only has to endure that the holder of the servitude performs certain actions or has to give up performing certain actions, to which he would otherwise be entitled as the holder of the right of ownership .<sup>23</sup>

### **2. 4. Servitude should be useful;**

By this principle, we mean the fact that in order for a servitude to exist, there must be a need for its constitution. A servitude can be constituted if it is beneficial to the holder of the dominant property.

### **2. 5. The principle of servitude restriction (Exercise of servitude must be done carefully);**

The principle of exercising the servitude carefully means that the holder of the servitude right must exercise his right in order to minimize or damage the service land.

### **2.6. Independent inalienability of servitudes**

Servitude can not be alienated without the alienation of the service property itself,

<sup>20</sup> Statovci. Ejup. *E Drejta e Servituteve*. Prishtina, 1985, p. 65.

<sup>21</sup> Ibid. p. 65.

<sup>22</sup> Statovci. Ejup. *E Drejta e Servituteve*. Prishtina, 1985. p. 65.

<sup>23</sup> Aliu. Abdulla. *E Drejta Sendore (pronësia)*. Prishtina, 2009. p.149.

ie the dominant property. So the right of servitude is related to the main thing, with which we can say that the alienation (sale-transfer) of the servitude to the other can be done only together with the thing, but by no means as an independent.<sup>24</sup> So by no means can the servitude be separated from the main thing, but in case the main thing is alienated, it is alienated together with the right of servitude. In a word, the servitude is related to the main thing, since with the destruction of the main thing, the servitude itself can cease.

### **2.7. There can be no servitude in the servitude itself;**

This principle means that: the right of servitude can not be charged with servitude. In principle, there can be no servitude upon servitude, but this does not exclude the possibility that there may be more servitudes in an immovable property.

### **2.8. Property servitudes are indivisible**

By this principle we mean the fact that the servitude can not be divided (partitioned). The right of servitude is a unique right and has no dependence on the fact of division of the dominant property or any other action on the dominant property, and servitudes can not be acquired or extinguished only in a part of the land surface but only in favor or encumbrance of an immovable property.<sup>25</sup>

## **3. Types of Servitudes**

Although servitudes are a unique legal institute, still within them there are types of servitudes. The criterion for the division of servitudes is the fact whether the servitude was created for the benefit of the permanent owner of an immovable property or for the benefit of a certain person. If the servitude is ascertained in favor of the permanent owner of an immovable property, it is called *real estate servitude*. Whereas, if it is ascertained in favor of a certain person, this servitude is called *personal servitude*. Both real and personal servitudes are diverse. There is no principle of tax counting in real servitudes as they are innumerable and new ones are constantly created. According to the traditional division, **real servitudes** are divided into: field and urban servitudes.

## **4- Property (Real) Servitudes**

Property servitude is a right over a property which enables the use and exploitation of another immovable property for the benefit of an immovable property. In true servitude both on the active and passive side, the object (subject) is an immovable thing. Real estate on the active side is called predominant property (*praedium dominans*), in favor of which property servitude is created, while real estate on the passive side is called service property (*praedium serviens*), which endures the creation of real servitude for profit of the predominant property. Therefore, it has been ascertained that the object of the real servitude can be: land, buildings, house and dwelling. According to a legal definition it is stated that: `` *real servitude is the right of the owner of an immovable property (ruling property) to perform certain actions on the immovable property of the other owner (service property) or to request from the owner of the service property to refrain from performing certain actions* ``.<sup>26</sup> So in general it is

<sup>24</sup> Statovci. Ejup. *E Drejta e Servituteve*. Prishtina, 1985. p. 75.

<sup>25</sup> Ibid. p. 272.

<sup>26</sup> Law on Basic Legal-Property Relations, Article 49, paragraph 1, Official Newspaper of the SFRY

said that: property servitudes are considered those servitudes based on which the owner of an immovable property must endure that the owner of another immovable property uses his immovable property for the needs of his immovable property, because property servitude exists.<sup>27</sup> Property servitude has the character of real estate, because it is created for the benefit or at the expense of the current owners of real estate on the active and passive side. Property servitude is established between the holder of the servitude (the owner of the dominant property) and the owner of the service property. The holder of the property servitude can be: the owner of the dominant property or its current possessor. According to the manner of realization it can be established, as: permanent right (when the holder of the servitude exercises it for the whole time) and as a temporary right (when the holder of the servitude exercises it from time to time); According to the law, property servitude is established for a certain time, for a certain season, etc.<sup>28</sup> From this given legal meaning of the right of servitude, taking into account the given limitation of this right, derive three above characteristics and principles of the right of servitude. Real servitudes as real estate legal relations are divided into<sup>29</sup>: field servitudes and urban servitudes. The servitudes of the field enable the use of many rights such as: the right of people to pass through the service good; the right of passage of animals; the right to receive water from the service good; the right to graze animals, etc. From urban servitudes can derive rights such as: the right of wall support to the foreign wall; supporting the beam on the foreign wall; window opening in foreign wall etc.

#### **4.1. Types of property (real) servitudes**

Traditionally, property servitudes are divided into: land servitudes (field) - *iura praediorum rusticiorum* and household servitudes - *iura praediorum urbanorum*.

##### **4.1.1 Terrestrial (field) servitudes**

Field servitude is a property right on the foreign property, which is created for the benefit of the current owner of the dominant land, charging the current owner of the service land, in order to make the best economic use and increase the value of the dominant land. The following are counted as field servitudes: the easement of crossing on foot; of animal crossing; of chariot crossing; of motor vehicles; extraction (taking) of water; etc.

A- Servitude on crossing on foot means the possibility of walking on foreign land, of the holder of the servitude and other persons, whether those who come to the holder of the servitude, or those who leave (leave) it.

B- The servitude of the passage of animals through foreign land, means the passage of cattle, poultry, passage by wheelbarrow or small light cart that is pushed or pulled by man himself.

C- Servitude of passage by chariot, motor vehicles, etc. It means the opening of certain roads and paths through which one passes with those means.

D- Servitude of water means: the passage of water through the land of another; watering livestock at another's source; the transfer of dirty water through the canals of

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<sup>27</sup> Aliu. Abdulla, *E drejta sendore (pronësia)*, Prishtina 2009, p. 155.

<sup>28</sup> Statovci. *Ejup. E Drejta e Servituteve*. Prishtina, 1985. p. 69.

<sup>29</sup> See: Law. No. 03/L-154 on Property and Other Real Rights. Prishtina, 2009. Article 252.

another; the passage of canals through another's land; pouring rainwater on another's property either as a drip of shelters or through canals; filling water in another's water source or well; etc..<sup>30</sup> So terrestrial servitudes always exist between two lands.<sup>31</sup>

#### **4.1.2 Domestic(urban) servitudes**

The second type of property servitudes are domestic servitudes, which are also unlimited in number. For each piece of legislation their number varies.<sup>32</sup> Domestic servitudes are: the right of compulsory passage through foreign land; the right to reinforce the beam on the foreign wall; the right of smoke to pass through the foreign chimney; the right of atmospheric water and other waters to flow through the neighbor's land; the right to place the TV antenna in the foreign palace, etc. The municipal technical servitude is a real right in the foreign thing, which is created for the benefit of the current owner or possessor of the service thing by authorizing him to take certain actions in the real estate of the neighbor, who is obliged to endure.<sup>33</sup>

#### **4.2. The object of property servitude**

Property servitudes for object have a thing. The item is always immovable.<sup>34</sup> Always in the creation, respectively the acquisition of any property right and also of the right of servitude, the objects are always things but also the actions of the subject of the right to come to the acquisition of the right of property servitude.<sup>35</sup>

#### **4.3. Subjects of property servitudes**

Subjects of property servitude are determined based on the fact who is authorized of the right of property servitude. The authorized person is always the owner of the dominant real estate. When the dominant real estate is the object of more subjects, then all the co-owners are authorized, ie the joint ownership.<sup>36</sup>

#### **4.4. Gaining property servitudes**

As mentioned above, property (real) servitude is created by legal action (contract, will), by decision of the state body and by statute of limitation, and all the rights created to be acquired must be registered in the public books of real estate to be acquired as right. So the servitude is created at the moment when the contract or will is concluded. In cases related to legal work - contract, the real servitude can be established by agreement (pactum), concluded between the owner of the ruling immovable property and the owner of the service immovable property, the first one, for the needs of his immovable property, takes actions in the foreign immovable property, and the latter endures or does not take action even though he would have the right to undertake them in his real estate. With a will expressing the last will of

<sup>30</sup> Statovci. Ejup. *E drejta e servituteve*. Prishtina, 1985, p. 102-103.

<sup>31</sup> Aliu. Abdulla. *E Drejta Sendore (pronësia)*, Prishtinë 2009. p. 157.

<sup>32</sup> Ibid. p, 159.

<sup>33</sup> See: [www.juridiku.weebly.com/.../3/.../drejta\\_e\\_servituteve1](http://www.juridiku.weebly.com/.../3/.../drejta_e_servituteve1). // taken on: 24.01.2015, time: 17:22.

<sup>34</sup> Aliu. Abdulla. *E Drejta Sendore (pronësia)*, Prishtina 2009. p. 160.

<sup>35</sup> Explanation: actions taken by the subject of the law, whether a natural or legal person, who intends to acquire a real servitude right; he initially undertakes actions such as: creating a legal work, eg a contract with the owner of the service land, e then in addition to creating the contract, he must take action and register it in the public books for the registration of real estate. Since in order to acquire a servitude right you need a legal title (iustus titulus) and registration in the public books of real estate (modus aschuirendi).

<sup>36</sup> Aliu. Abdulla. *E Drejta Sendore (pronësia)*, Prishtina 2009. p. 160.

the testator, the real servitude can be established in one of the following ways:

- A. When the testator orders the heir or the legatee to establish the right of servitude in any immovable property from the hereditary measure for the benefit of the third person;
- B. When the testator orders the heir or legatee, in his immovable property, to establish a servitude for the benefit of a third person;
- C. When the testator leaves an immovable property to more heirs and one of them orders him to establish a real servitude for the benefit of the other owners.

**By decision of the state body, the real servitude is established:**

- a.- with a court decision for the division of the thing-during the procedure for the division of the real estate community;
- b. - by decision of another state body - as in the case with incomplete expropriation, when the administrative body by decision constitutes a real servitude on someone's land or building.
- c. - by the way of statute of limitation (usucapio), the real servitude is established, if the legal conditions for statute of limitation are concretely met: the owner of the dominant land has actually realized the servitude for 20 years and the owner of the service land has not objected to it.

***Some of the servitude cases, in practice:***

1. The owner A of the dominant land has entered into an oral contract with the owner B of the service land, for the establishment of the property servitude. Is this contract considered valid? The contract with which the real servitude is established, is considered valid even though it has not been concluded in writing, if the contracting parties, in full, fulfill the obligations arising from it.
2. Owner A of a house without a yard needs to keep and cut down trees in the neighbor's yard. In what way can owner A establish a property servitude? Possession of the right of property servitude is established by contract and enjoys protection against third parties entering into possession of the yard without legal basis.
3. The owner A of the dominant property with the owner B of the service property have constituted the real servitude through an agreement, which is part of the contract of sale-purchase of the dominant property.

The question is that what applies to the sale-purchase contract, should it also apply to the provision related to the constitution of the servitude?

What applies to the sale-purchase contract, also applies to the provision related to the constitution of the servitude: written form and notarization.<sup>37</sup> The law explicitly states that: `` the real servitude is decided by legal action, the decision of the state body and by means of the winning status of limitation.<sup>38</sup>

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<sup>37</sup> See: [www.kuvendikosoves.org/./2009\\_03-L-139\\_al.pdf/](http://www.kuvendikosoves.org/./2009_03-L-139_al.pdf/) as well as [www.gjk-ks.org/taken](http://www.gjk-ks.org/taken) on 24.01.2015, time: 18:02.

<sup>38</sup> Law on Basic Legal-Property Relations, Article 49, paragraph 1, Official Newspaper of the SFRY no. 6/80, Article 51.

#### 4.5. Loss of property servitudes

Property rights, ie the right of servitude as acquired, can also be extinguished. The property servitude is lost if the owner of the service property opposes its exercise, while the owner of the dominant property does not exercise it for three consecutive years; when there is no reason why the servitude was established; when it is not exercised during the time necessary for its acquisition, by means of the winning statute of limitation; when the same person becomes the owner of the service and dominant property; when service or dominant property is destroyed. The law explicitly provides for the cases when the right of real servitudes is extinguished and this is provided in article 58 which states: `` *The real servitude ceases if the owner of the service property opposes its exercise, while the owner of the ruling property has not exercised his right for three (3) consecutive years*``.<sup>39</sup> The conditions that usually lead to the termination of the right of servitude are approximately these:

1. The servitude is extinguished by the resignation of the holder of the dominant land;
2. The real-property servitude is extinguished with the destruction of the dominant land or service land;
3. The servitude is extinguished if the same person acquires the right of ownership in both the dominant land and the service land.
4. If the servitude has been contracted for the specified time, it is extinguished over time.
5. The servitude is extinguished if the profit (interest) for the dominant land falls forever<sup>40</sup>

#### 5- Protection of Servitudes

Servitudes as property rights enjoy legal protection, therefore the positive legislation has taken care in this regard to provide for the manner of protection of servitudes. The law provides that: "*If the owner of the unjustifiably ruling property is prohibited or obstructed in the exercise of the real servitude, he may sue for such prohibition or obstruction to cease*"<sup>41</sup> For the protection of the right of servitude there is a lawsuit with the name: Confessional lawsuit (*action confesoria*).<sup>42</sup>

### Conclusions

A servitude is an independent real right in a foreign thing, according to which the holder of this right is authorized to use the foreign thing in a certain way.

Since servitude is a real right in a foreign thing (*ius in re aliena*), it has been concluded that this right does not have the concept of property, but is a deregulation of property authorizations, a restriction of ownership. Moreover, the very existence and realization of the servitude has the meaning of restricting the right of ownership of that foreign thing. This is so because the holder of the right of servitude can use the foreign thing in a certain way, which at the same time restricts the owner of that

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39 Ibid. article 58.

40 Aliu. Abdulla. *E Drejta Sendore (pronësia)*. Prishtina 2009. p.164.

41 Law on Basic Legal-Property Relations, article 57.

42 Aliu.Abdulla. *E Drejta Sendore (pronësia)*, Prishtina 2009. p. 165.

thing in exercising his property-legal authorizations: the owner enjoys the right of possession and disposal in unlimited way over the thing that he owns and that is the object of the right of servitude, while he realizes the right of use not in contradiction with the law or the right of any person. Which means that the owner of the thing in the servitude can not use his thing in contradiction with the authorizations of the holder of the servitude. The content and function of the servitude is intended to give the holder of the servitude authorizations to use the foreign thing in a certain way, while the owner of that thing to allow, respectively to endure that use. The obligation of the owner of the thing does not derive from the obligatory legal relations but from the legal property relations. The right of servitude as a real right differs from the obligatory relations. A servitude creates a dual relationship: between the owner and the holder of the servitude, as well as a relationship between the holder of the servitude and third parties. Here it is seen, that the servitude in its nature is absolute right and acts *erga omnes*. It not only acts on the concrete owner, but also on all third parties.

The holder of the servitude has the right to oppose any action that hinders the exercise of his powers deriving from the servitude, whether it is the action of the owner of the thing, or it is the action of a third person. The right of servitude, as a property restriction of a foreign thing, never fully absorbs the legal property authorizations: *jus utendi, jus fruendi and jus abutendi*. The holder of the servitude based on the authorizations given to him by the right of servitude can only use the foreign thing in a certain way, in a reasonable amount and volume to use his own thing that has the quality of the dominant thing. The owner of the service item always has the right to dispose of the service item. He can, without any restrictions, alienate it, endure it, mortgage it, etc.

### References

- Aliu, Abdulla. E Drejta Sendore (pronësia), Prishtina 2009.  
Aliu, Abdulla. E Drejta Civile, General part, Prishtina 2013.  
Aliu, Abdulla. Burimet e së Drejtës Civile në Kosovë, Prishtina 1999.  
Galgano. Francesco. Private Right, Italy 1992.  
Gams, Andria. Bazat e së Drejtës Reale (sendore). Prishtina, 1978.  
Gams, Andria. Hyrje në të Drejtën Civile, Prishtina, 1986.  
Selmani, Bashkim, E Drejta Romake, Tetova 2013.  
Statovci, Ejup. E Drejta e Servituteve. Prishtina, 1985.  
Codes and Laws  
Civil Code of the Republic of Albania of 1994.  
Law on Property and Other Real Rights, Law no. 03 / L-154 dated 25.06.2009 decreed by the Decree of the President of Republic of Kosovo DL-016-2009 and announced in Official Newspaper no. 57 dated 04.08.2009;  
Law on Basic Property-Legal Relations, Official Newspaper, SFRY, no. 6/1980, 36/1990, 26/1995.  
Websites on the Internet  
[www.juridiku.weebly.com/.../3/.../drejta\\_e\\_servituteve1](http://www.juridiku.weebly.com/.../3/.../drejta_e_servituteve1). // taken on: 24.01.2020, time 17:22  
[www.kuvendikosoves.org/.../2009\\_03-L-139\\_al.pdf](http://www.kuvendikosoves.org/.../2009_03-L-139_al.pdf) /, taken on 24.01.2020, at 17:42.  
[www.gjk-ks.org/](http://www.gjk-ks.org/), taken on 24.01.2020, at 18:02.